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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 939 OF 2007

Peacebird Premises Coop. Society Limited, a Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1960 having its registered office at 113, T.H. Kataria Road, Matunga (West), Bombay 400 016.

Versus

1. Collector of Stamps of Mumbai, having his office at Collector's Office, Old Custom House, Third Floor, Mumbai 400 023.

2. Sub Registrar of Mumbai having his office at Collector's Office, Old Custom House, Third Floor, Mumbai 400 023.

3. State of Maharashtra, ... Respondents

Mr. D.S. Parikh, Sr. Counsel with Mrs. S.S. Balsari for Petitioner.

Mr. K.R. Belosey, Government Pleader for Respondents.

CORAM: F.I. REBELLO & J.P.DEVADHAR, JJ.
DATED: AUGUST 22, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

. The Petitioner a Cooperative society had filed the present petition for appropriate writ or direction to the Collector of Stamps, Mumbai, the first respondent, to certify that no stamp duty is

payable on the Consent Decree dated 4th February, 1983 passed by this Hon'ble Court in Suit No. 1031 of 1982. The Petitioners herein and others had filed a suit against Mrs. Anusuya Shah and Ors. and others. The relief was by way of mandamus to send the consent decree to the second respondent and for a further writ of mandamus or any other appropriate writ, order or direction to the second respondent to register the said Consent Decree under the Indian Registration Act, 1908 and to deliver the same to the Petitioners duly registered. There are various other reliefs which need not be adverted to.

2. There was a building known as Shah Building No. 6 which consisted of shops on the ground floor and residential flats on three upper floors. Negotiations took place between the tenants on the 1st, 2nd and 3rd floors and said Champaklal Chimanlal Shah whereupon the agreement for sale of the respective premises in the occupation of the said tenants on ownership basis were executed between the said Champaklal Chimanlal Shah on the one hand and individual tenants of the premises on the said three floors of the said building on the other hand. It was also agreed that the tenants of the flats in the said building should form a cooperative society under the Maharashtra Cooperative Societies Act, 1960 and that the said

Champaklal Chimanlal Shah should complete the sale of the said property by executing a Deed of Conveyance in favour of such a Cooperative Society in respect of the plot of land together with the said building standing thereon, on payment of the balance amount of the purchase price provided in the said agreements. The said Champaklal Chimanlal Shah died on our about 2nd August, 1975 leaving his wife Mrs. Anusaya Champaklal Shah and three daughters as his heirs. The society was thereafter formed but the property not transferred. A suit came to be filed in which the consent decree was obtained.

3. The consent decree, was to operate as conveyance of the property in terms set out therein. The said consent decree dated 4.2.1983 was lodged in the office of the second respondent for registration under the Indian Registration Act. It is the case of the Petitioners that the Deputy Superintendent of Stamps (General Stamp Office), at Mumbai after about 18 years sent a letter dated 2.1.2001 setting therein that the consent decree was impounded by the second Respondent and was sent to the Office of the Deputy Superintendent of Stamps for recovery of stamp duty, if any, payable on the said Consent decree under the Bombay Stamp Act, 1958. The respondent No. 2 called upon the Petitioners to produce before him a copy of the Plaint filed in the

said suit and a copy of the said Consent terms dated 4th February, 1983 filed in the said suit as well as copies of the individual agreements executed by the tenants of the said building, who were members of the Petitioner society, with the said Champaklal Chimanlal Shah for sale of the individual flats to the tenants thereof. Thereafter there has been correspondence exchanged. The Petitioner also sent letter dated 9th March, 2005 to the Deputy Superintendent of Stamps requesting him to certify that no stamp duty was payable on the said Consent Decree and further to return the same to the Sub Registrar of Assurances at Bombay for being registered. As the Petitioners did not hear from the Deputy Superintendent of Stamps, the correspondence was exchanged. It is the case of the Petitioner that they drew attention of the said Deputy Superintendent to the judgment of this court.

4. It is the case of the Petitioners that the action of the second respondent in impounding the consent decree which was lodged for registration and despatch thereof by him to the Deputy Superintendent of Stamps at Bombay for adjudication of stamp duty payable thereon and the failure of the 1st respondent to issue certificate that no stamp duty is payable thereon and further to return the said consent decree to the second respondent fro

registration thereof is wrongful and illegal.

5. The main contention urged on behalf of the Petitioners is that the expression conveyance in Section 2(g) of the Bombay Stamp Act, 1958 prior to its amendment by Maharashtra Amendment of 27 of 1985 did not include a consent decree and consequently actions of the respondents are without jurisdiction.

. On the other hand on behalf of the respondents, it is submitted that the very issue is covered by the Judgment of the Division Bench of this court in State of Mah. and Others Vs. M/s. M.S. Builders (Private) Limited, 1992 (1) Bom.C.R. 568.

6. The question to be answered is "Whether a consent decree which transfers immovable property, is a ’conveyance" within the meaning of Section 2(g) of the Bombay Shop Act before its amendment by the Act No. 27 of 1985.The learned Division Bench was considering the question amongst others whether the definition of conveyance, under section 2(g) of the Bombay Stamp Act, 1958 includes the consent decree or it falls outside the ambit and scope of the definition of conveyance. It may be noted that the definition of conveyance under section 2(g) came to be amended by Maharashtra Act 27 of 1985. The amendment was made retrospective with effect from

9.1.1985. The unamended definition of the word conveyance reads as under :

> "2(g) : "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I."

. The definition of conveyance after its amendment by Maharshtra Act No. 27 of 1985 reads as under :

> "Conveyance includes, (i) a conveyance on sale, (is) every instrument, and (Viii) every decree or final order of any Civil Court, by which property, whether moveable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vinos, and which is not otherwise specifically provided for by Schedule I."

. One of the issues before the court considering the contentions of the parties was whether the amendment is by way of substitution or in the nature of clarification. After considering various contentions, this court was pleased to answer the

issue as under :

> "15. After going through the various authorities cited before us we are of the opinion that the amendment introduced by Maharasthra Act No. 27 of 1985 is merely a declaratory and not a remedial one. The interpretation to the word "includes" given by the Supreme court in CHIT.A.P. Vs. M/s. Taj Hotel (supra), more appropriately applies which gives the interpretation of word "includes" and we accept the same. We are in agreement with the interpretation sought to be placed by the learned Government Pleader. In our opinion, having regard to the recitals in the consent decrees that the consent decree do operate as a conveyance, such consent is covered by the definition of "conveyance" under the Act and at any rate a consent decree which fulfills all the requisites is of transferring right, title and interest under the consent decree in favour of the respondents - writ petitioners (vendees) in an instrument under section 2(g) of the Act. Such a consent decree would therefore, be liable to stamp duty under Entry 25 of Schedule I of the Act."

. It is therefore, clear that the learned Division Bench took a view that the definition of conveyance even before its amendment would include consent decree which fulfills all the requisites of conferring right, title and interest in favour of the vendees.

7. On behalf of the Petitioners, the learned counsel however has sought to place reliance firstly on the judgment of the learned Single Judge of this court in the case of Padma Nair Versus The Deputy Collector and another, 1994(1) Bom.C.R. 298. The issue before the court was whether the document was an agreement for sale of immovable property or it was conveyance of immovable property. The court answering the issue held that the document was pure and simple agreement for sale. After so considering the next question that the court was called upon to answer was whether the agreement had to be registered and stamp duty paid in terms of the Maharashtra Act 27 of 1985 which amended the Bombay Stamp Act, 1958 with effect from 9.12.1985. The learned Judge after considering Item 25 of the Schedule and considering that the explanation had come into effect from 9.12.1985, held it would not be applicable to transaction entered into before that date. It will thus be clear that what the

learned Single Judge was considering was the explanation and in respect of the agreement to sell which did not fall within the expression conveyance as it stood before its amendment.

. Next reliance was placed on the judgment of the learned Division Bench of this court in Nirmala Manherlal Shah Vs. State of Maharashtra and Ors 2005(3) Mh.L.J. 829 to which one of us (Rebello,J.) was party. In that case, the agreement was entered into on 19.7.1980. The agreement was lodged with the Collector for an endorsement whether the document was properly stamped by paying the fees. The Petitioner received the demand notice by hand delivery informing that the agreement submitted was impounded under Section 32 of the Bombay Stamp Act, 1958 and was called upon to pay the amount as demanded. The case of the Petitioner was that the demand was illegal as the amendment by way of explanation to Article 24 of Schedule I of the Bombay Stamp Act came into force on 9.12.1985 and the agreement was entered into on 19.7.1980. The amount was however, paid under protest. Thereafter the Petitioner prays for the refund of the amount with interest at the rate of 12% p.a. The questions formulated by this court were as under :

(1) If a document was submitted under Section 31 of

the Bombay Stamp Act, 1958 for adjudication whether it was open to the respondent to impound the said document and demand the stamp duty and penalty in terms of the demand made on the Petitioner; and

(2) Whether the agreement to sell entered into in the year 1980 requires payment of Court Fees in terms of the amendment to the Bombay Stamp Act, 1958 which insofar as payment of stamp duty is concerned, came into effect from 10th December, 1985.

. We need not to into the first issue. In so far as second issue is concerned, the learned Division Bench relied on the judgment in Padma Nair (supra) as also ITC Ltd. and anr. Vs.The State of Maharashtra and Ors. 1997 (4) BCR 536, held that Item 25 as amended would be applicable only to those agreements which were entered into before 9.1.1985.

. Next reliance was also placed on the judgment in Smt. Prabha Laxman Ghate Vs. Sub Registrar and Collector of Stamps, Pune and anr. AIR 2004 BOMBAY 267. In that case, the question was whether the agreement entered into would be an agreement covered by the amended definition of the expression "conveyance". The learned Division Bench on the facts held that the developer only constructed a building for Petitioners on Petitioner’s own land

and as such there was no transfer of property or interest in property by Petitioner in favour of developer by agreement in question and as such no stamp duty was payable even though the agreement was entered into on 10.4.1989.

8. It will therefore, be clear that all the three judgments of this court were considering whether stamp duty was payable on the agreement to sell entered into before 9.1.1985. This court took a view that only in respect of those agreements which were agreements to sell and the vendee in possession and entered into with effect from 9.12.1985 and not earlier were to be stamped in terms of the definition 'conveyance' read with explanation under article 25 of Schedule I.

. Those authorities are of no assistance in so far as Petitioner is concerned as admittedly there is no dispute that the consent decree conveyed the property. On the facts of this case, the issue would squarely be covered by the judgment of the learned Division Bench of this court in M/s. M.S. Builders (supra).

9. For the aforesaid reasons, we are of the view that there is no merit in this appeal which is accordingly dismissed. Rule discharged. There

shall be no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**